

§719.4

clause requiring compliance with this part.

(c) This part also covers any contract the Department awards directly to retained legal counsel exceeding \$100,000.

§719.4 Are law firms that are retained by contract by the Department covered by this part?

Legal counsel retained under fixed rate or other type of contract or other agreement by the Department to provide legal services must comply with the following if the legal costs over the life of the matter for which counsel has been retained are expected by the Department to exceed \$100,000 and retained legal counsel are so notified by the Department:

(a) Requirements related to Staffing and Resource Plans in subpart B of this part;

(b) Cost guidelines in subpart E of this part; and

(c) Engagement letter requirements in subpart C of this part if the retained legal counsel subcontracts legal work valued at \$25,000 or more (e.g., a law firm retained by the Department subcontracts with another law firm to provide \$26,000 in discovery-related legal work).

§719.5 What contracts are not covered by this part?

This part does not cover any contract under which the Department is not responsible for directly reimbursing the contractor for legal costs, such as fixed price contracts.

§719.6 Are there any types of legal matters not included in the coverage of this part?

Legal matters not covered by this part include:

(a) Matters handled by counsel retained by an insurance carrier, except under retrospective insurance in accordance with §719.45;

(b) Routine intellectual property law support services; and

(c) Routine workers and unemployment compensation matters.

§719.7 Is there a procedure for exceptions or deviations from this part?

(a) Requests for exceptions or deviations from this part must be made in writing to Department Counsel and ap-

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proved by the General Counsel. If an alternate procedure is proposed for compliance with an individual requirement in this part, that procedure must be included in the written request by the contractor. The General Counsel or his/her delegee shall provide a written response to such requests; however the response shall not require a justification of the Department's exercise of its discretion.

(b) The General Counsel may authorize exceptions or deviations requested under paragraph (a) of this section. The General Counsel may also establish exceptions to this part based on current field office and contractor practices that satisfy the purpose of these requirements.

(c) Exceptions to this part that are also a deviation from the Department of Energy Acquisition Regulation (DEAR) cost principles (see subpart D of this part) must be approved in accordance with applicable DOE procurement policy. See, e.g., DOE Acquisition Guide chapter 1.1, requiring approval by the Senior Procurement Executive of DOE or NNSA as applicable. In any event, the written request from a contractor for a deviation from a cost principle relating to this part must be submitted to the contracting officer, with a copy provided to Department Counsel.

§719.8 Does the provision of protected documents from the contractor to the Department constitute a waiver of privilege?

Contractors are required to provide detailed information about third-party claims and litigation to the Department. The Department and its contractors typically share common legal and strategic interests relating to pending or threatened litigation. The common interest between the parties is primarily rooted in the fact that the Department reimburses contractors for allowable costs incurred when litigation is threatened or initiated against contractors. However, other sources of the common interest between the Department and its contractors may include, but are not limited to, an interest in completion of the agency's important mission work and an interest in safe and efficient operation of the